

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

JUSTIN LYNN VICTORY,

**Plaintiff(s),**

V.

HENDERSON NA P.D., et al.,

Defendant(s).

Case No. 2:23-cv-02086-CDS-NJK

## ORDER

The Court granted Plaintiff's application to proceed *in forma pauperis* subject to making a partial payment. Docket No. 10; *see also* Docket No. 16 (receipt of partial payment). The Court now screens Plaintiff's complaint with respect to the Henderson Police Department pursuant to 28 U.S.C. § 1915(e).<sup>1</sup>

Federal courts are given the authority to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). When a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from the face of the complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723 (9th Cir. 2000). A properly pled complaint must provide a short and plain statement of the claim showing that the pleader is entitled to relief. Fed.R.Civ.P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*,

<sup>1</sup> The Court will separately address the claims with respect to the Bank of America, Metro police Defendants, and the John Doe Henderson police officers.

1 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual allegations, it  
 2 demands “more than labels and conclusions” or a “formulaic recitation of the elements of a cause  
 3 of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (*citing Papasan v. Allain*, 478 U.S. 265,  
 4 286 (1986)). The court must accept as true all well-pled factual allegations contained in the  
 5 complaint, but the same requirement does not apply to legal conclusions. *Iqbal*, 556 U.S. at 679.  
 6 Mere recitals of the elements of a cause of action, supported only by conclusory allegations, do  
 7 not suffice. *Id.* at 678. Secondly, where the claims in the complaint have not crossed the line from  
 8 conceivable to plausible, the complaint should be dismissed. *Twombly*, 550 U.S. at 570.  
 9 Allegations of a *pro se* complaint are held to less stringent standards than formal pleadings drafted  
 10 by lawyers. *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal  
 11 construction of *pro se* pleadings is required after *Twombly* and *Iqbal*).

12 Plaintiff’s complaint seeks to bring a claim against the Henderson Police Department under  
 13 42 U.S.C. § 1983. *See* Docket No. 1-1 at 1. Local governments, such as municipalities, cannot be  
 14 held liable under § 1983 on a *respondeat superior* theory. *Monell v. Dept. of Soc. Serv. of City of*  
 15 *N.Y.*, 436 U.S. 658, 691 (1978). Local governments can instead be sued only for “a policy  
 16 statement, ordinance, regulation, or decision officially adopted and promulgated by that body’s  
 17 officers” or for a “governmental ‘custom’ even though such a custom has not received formal  
 18 approval through the body’s official decisionmaking channels.” *Id.* at 690-91.<sup>2</sup>

19 Plaintiff’s complaint alleges that Henderson police officers used excessive force. *See*  
 20 Docket No. 1-1 at 3. Plaintiff makes no allegations at all with respect to the Henderson Police  
 21 Department, however, other than alleging that the officers were members of the department. Such  
 22 allegations are insufficient to plead a claim for *Monell* liability. *See, e.g., Christie v. Iopa*, 176 F.3d  
 23 1231, 1235 (9th Cir. 1999) (“A single constitutional deprivation ordinarily is insufficient to  
 24 establish a longstanding practice or custom”).

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26 <sup>2</sup> The proper party in this case would be the City of Henderson and not the Henderson  
 27 Police Department. *E.g., Wallace v. City of N. Las Vegas*, 2011 WL 2971241, at \*1 (D. Nev. July  
 28 20, 2011). Regardless, allegations sufficient to state a *Monell* claim are absent here, even were the  
 correct party sued.

1 In light of the above, Plaintiff has failed to state a claim against the Henderson Police  
2 Department. “Generally, a plaintiff who names municipal entities without *Monell* allegations will  
3 be given an opportunity to amend the complaint.” *Nelson v. Inyo County Sheriffs Dept.*, 2007 WL  
4 2711399, at \*5 n.3 (E.D. Cal. Sept. 14, 2007). It seems unlikely that Plaintiff could cure the  
5 deficiency identified, but leave to amend will be provided to err on the side of caution.

6 Accordingly, Defendant Henderson Police Department is **DISMISSED** from the case with  
7 leave to amend. Plaintiff will have until **May 24, 2024**, to file an Amended Complaint, if the noted  
8 deficiencies can be corrected. If Plaintiff chooses to amend the complaint, Plaintiff is informed  
9 that the Court cannot refer to a prior pleading (i.e., the original Complaint) in order to make the  
10 Amended Complaint complete. This is because, as a general rule, an Amended Complaint  
11 supersedes the original Complaint. Local Rule 15-1(a) requires that an Amended Complaint be  
12 complete in itself without reference to any prior pleading. Once a plaintiff files an Amended  
13 Complaint, the original Complaint no longer serves any function in the case. Therefore, in an  
14 Amended Complaint, as in an original Complaint, each claim and the involvement of each  
15 Defendant must be sufficiently alleged. **Failure to file an amended complaint will result in the**  
16 **recommended dismissal of the Henderson Police Department without further opportunity to**  
17 **amend and the case will instead proceed only with respect to the John Doe Henderson police**  
18 **officers.**

IT IS SO ORDERED.

Dated: April 24, 2024

  
Nancy J. Koppe  
United States Magistrate Judge